

D

Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

NOV 25 2003

File: EAC-01-260-54351 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]

Beneficiary [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center. The director then determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, an importer/exporter and manufacturer of jewelry, seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities or that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts the beneficiary's eligibility.

Counsel had indicated that additional evidence would be submitted in support of the appeal on or before July 10, 2002. To date, no additional evidence has been received. Therefore, the record must be considered complete.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1) (1) (ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a) (15) (L) of the Act.

Regulations at 8 C.F.R. § 214.2(1) (1) (ii) (I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Regulations at 8 C.F.R. § 214.2(1) (1) (ii) (J) state:

Branch means an operating division or office of the same organization housed in a different location.

Regulations at 8 C.F.R. § 214.2(1) (1) (ii) (K) state:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

Regulations at 8 C.F.R. § 214.2(1) (1) (ii) (L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The U.S. petitioner states that it was established in 1993 and that it is a branch of Nile Group for Trade Investment and the Nile

Pharaoh for Export, located in Cairo, Egypt. The petitioner declares fourteen employees and a gross annual income of \$313,542. It seeks to employ the beneficiary temporarily for one year at an annual salary of \$36,000.

The first issue to be addressed in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

In a letter dated March 5, 2002, the director notified the petitioner of his intent to revoke approval of the petition and requested that the petitioner submit additional evidence establishing that the United States entity shares a qualifying relationship with a foreign entity and that the beneficiary would be employed in a primarily managerial or executive capacity. The record does not contain a response to the director's request.

The petitioner claims that it is a branch of a family held Egyptian company, Nile Group for Trade Investment and the Nile Pharaoh for Export. Stock ownership of the foreign entity is described as follows:

Amr El Tahawy, Managing Director, 158,300 shares (63.33%); Ezzat El Tahawy, 5000 shares (2%); Ahmed Mohamed Mahmoud, 5000 shares (2%); Hala Zakaria Abd El Halim, 15,700 shares (6.28%); Roaf Mohamed Essam, 26,400 shares, (10.56%); Thoria Mohamed Essam, 13,200 shares, (5.28%); Mariam Mohamed Essam, 13,200 shares, (5.28%); Hapipa Mohamed Essam, 13,200 shares, (5.28%).

The Connecticut Application for Certificate of Authority Foreign Corporation notwithstanding, the record contains no evidence that the petitioner is or will be an operating division or office of the foreign entity. There is no evidence of any investment of capital, nor any reference made to the purported United States branch in minutes of any board of directors meeting(s), bank statements or foreign entity balance sheets, submitted as evidence. The fact that the beneficiary is the wife of foreign entity's managing director is not sufficient to establish a qualifying relationship. Therefore, the evidence of record is not sufficient in establishing that there is a qualifying relationship between the United States and foreign entities.

The next issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner described the beneficiary's duties, in pertinent part, as follows:

Her [the beneficiary's] duties in the U.S. would include all key management functions. She has already undertaken basic steps for the branch to open, like registering the business with government authorities, opening bank accounts, leasing living/working space and making preliminary sales contacts. If the L-1 visa is granted she will begin to be paid a salary of \$3,000 per month, as well as a company-paid home/office and automobile and will expand her activities to include making contracts for sales agents and evaluating their performance, selecting designs to expand our product line, hiring employees, putting inventory and order fulfillment system in place, etc. She is also exploring creating an interactive web site and a toll free telephone ordering service.... She will also continue to make design decisions and to decide what kinds of items we will manufacture and sell.

On appeal, counsel states, in pertinent part, that:

The Nile Group is a long-established, well-funded firm. [The beneficiary] rented premises, made customs and importing arrangements, made many sales calls, etc. to establish the company's pharaoh-themed jewelry importing business.

Despite counsel's contentions, the evidence provided does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary will be working in a primarily managerial or executive capacity. The majority of the beneficiary's duties such as making sales calls have not been shown to be managerial or executive in nature.

Further, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

The petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing nonqualifying duties. The beneficiary is the sole employee. Although the petitioner claims it will hire additional employees, it did not submit a hiring plan or other information showing when they would be hired and what they would be paid.

Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record does not contain evidence that the beneficiary has been employed for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.